

***United States Court of Appeals
for the Second Circuit***

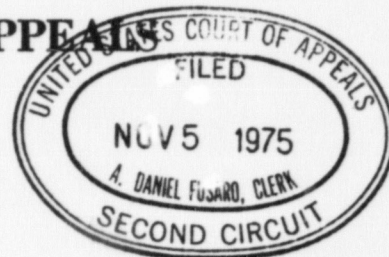


APPENDIX

75-7512

UNITED STATES COURT OF APPEALS

for the
SECOND CIRCUIT



CARLO BORDONI,

Plaintiff-Appellant,

-against-

TWIN COAST NEWSPAPERS, INC.
and HAROLD GOLD,

Defendants-Appellees.

ON APPEAL FROM AN ORDER AND JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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P/L

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CIVIL DOCKET
UNITED STATES DISTRICT COURT

JUDGE WEINFELD

Jury demand date:
by plttf 7-24-74JUDGE ~~WEINFELD~~
74 CIV. 3170

D. C. Form No. 105 Rev.

TITLE OF CASE

ATTORNEYS

CARLO BORDONI

VS.

TWIN COAST NEWSPAPERS, INC. AND
HAROLD GOLD

For plaintiff:

DI FALCO, FIELD, & O'ROURKE

605 Third Avenue, N.Y.C. 10016 986-243

For defendant:

9/4

15-75

STATISTICAL RECORD

COSTS

DATE

NAME OR
RECEIPT NO.

REC.

DISB.

J.S. 5 mailed X

Clerk

7/24/74 Di Falco
7/11/74 USV

11

J.S. 6 mailed ✓

Marshal *

Basis of Action:

DEFAMATION AND LIBEL ACTION

Docket fee

Witness fees

Action arose at:

Depositions

Docket Entries

A 2

CARLO BONDONI VS. TWIN COAST NEWSPAPERS, INC. ET-ANO

JUDGE WEINFELD

74 CIV. 31

DATE	PROCEEDINGS	Date Order Judgment N.
Jul 24-74	Filed Complaint. Issued Summons.	
Aug. 2-74	Filed summons and return-served the following: Harold Gold, personally, on 7-29-74 Twin Coast Newspapers, Inc. by Harold Gold on 7-29-74	
Aug. 20-74	Filed stip & order extending the time of defts. to answer to 9-3-74. So ordered- FRANKEL, J.	
ep. 4-74	Filed stip & order extending the time for deft. Twin Coast Newspapers, Inc. to answer, or serve third-party pleading, is extended to 9-17-74. So ordered FRANKEL, J.	
Sept. 18-74	Filed deft's notice of motion for order dismissing the complaint.	
Sept. 18-74	Filed memorandum of law in support of motion to dismiss	
Nov. 7-74	Filed Notice of Reassignment to Judge E. Weinfeld.	
Dec 3-74	Filed <i>Order of Reassignment of Record of Proceedings, Vol 27-74 (filed in 74-3168)</i>	
7-15-75	Filed ANSWERING Affidvt. of pltf.	
7-15-75	Filed plf's memorandum of law in opposition to defts motion to dismiss pltf's complaint	
7-15-75	Filed Reply memorandum of law in support of motion for order dismissing pltf's complaint as against defts, Twin Coast Newspapers, Inc. and Harold Gold	
07-15-75	Filed OPINION 42800 Defendants moved to dismiss complaint consisting of four claims. For reason stated, articles do not defame pltf. First three claims are dismissed. The claim based on innuendo is also dismissed --Weinfeld, J.	
08-07-75	^{m/n} Filed JUDGMENT--ORDERED that defts. have judgment against pltf. dismissing complaint. Clerk m/n	
09-04-75	Filed pltf. notice of appeal to the U.S.C.A. for the Second Circuit from Order and Judgment entered 8-7-75. mail copy to Amrod & Amrod.	

A TRUE COPY

RAYMOND E. BURCHARDT, CLERK

By *R. E. Thompson*
Deputy Clerk

A 3
COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CARLO BORDONI,

Plaintiff,

1974 Civil Action
No. 3170

-against-

TWIN COAST NEWSPAPERS, INC. and
HAROLD GOLD,

Defendants.

COMPLAINT

Plaintiff Demands
Trial by Jury

-----X
NATURE OF THE ACTION

1. This action is for libel and defamation of the Plaintiff by the Defendants.

PARTIES AND THEIR SITUS

2. Plaintiff, CARLO BORDONI ("BORDINI"), is a citizen and resident of the Country of Italy and resides at 29 Via Mose Bianchi, Milan, Italy.

3. Upon information and belief, Defendant TWIN COAST NEWSPAPERS, INC. ("TWIN COAST"), is a corporation organized and existing under the laws of the State of New York and maintains an office at 99 Wall Street, New York, New York and is doing business within this judicial district.

4. Upon information and belief, Defendant HAROLD GOLD ("GOLD") is an employee of Defendant TWIN COAST and has his offices at 99 Wall Street, New York, New York and may be found within this judicial district.

5. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$10,000.

BACKGROUND OF THE PARTIES

6. For many years BORDONI has been in the business of domestic banking, international banking, economics and monetary matters and is an acknowledged expert in these areas.

7. In his acknowledged position as an international monetary, banking and financial expert, BORDONI has edited a monthly financial review and has authored a number of articles concerning monetary and economic matters [which have been published in various monthly reviews and newspapers.]

8. BORDONI has been an officer and/or director of a number of international banking and financial institutions including Credito Italiano, Monte dei Paschi di Siena; Swiss Israel Trade Bank, London and Geneva, First National City Bank, Milan; Moneyrex, Milan; Banca Unione, Milan; and Amincor Bank, Zurich. BORDONI was also the Managing Director of SOCIETA GENERALE IMMOBILIARE ("SOCIETA") a real estate and financial institution with its principal office in Rome, Italy.

9. As Managing Director of SOCIETA, BORDONI was a member of its Executive Committee and the Managing Director and Chief Operating Officer of all its Italian and foreign subsidiaries with the primary responsibility of engaging in commercial and investment banking on their behalf.

A 5
COMPLAINT

10. As a director and/or officer of the aforesaid banks and financial institutions, BORDONI has dealt with some of the largest banks in the world in the areas of international banking and monetary transactions and among other things was responsible for the founding and growth of the Milan branch of First National City Bank and the growth of Banca Unione.

11. On or about August, 1972; BORDONI was elected as an outside member of the Board of Directors of FRANKLIN NEW YORK CORP. ("FRANKLIN"), a holding company, whose principal subsidiary is FRANKLIN NATIONAL BANK, (the "Bank"). In addition, since 1972, BORDONI has been a member of FRANKLIN's International Executive Committee, which is composed of certain members of the Board of Directors of FRANKLIN and the BANK.

12. BORDONI, as an outside member of the Board of Directors of FRANKLIN, was never involved, directly or indirectly, in: (a) the daily internal financial affairs or daily financial transactions of FRANKLIN or the BANK; (b) the internal management of FRANKLIN or the BANK; or (c) the performance of any duties on behalf of FRANKLIN or the BANK except those duties of an outside director of FRANKLIN.

13. Due to his reputation, financial and banking acquaintances and contacts in the European financial community, BORDONI assisted in the placement of approximately 750,000,000 Eurodollar funds into the London, England and Nassau, Bahamas branches of the BANK.

A 6
COMPLAINT

14. From time to time during the relevant periods herein set forth, the BANK engaged in foreign currency exchange transactions. At no time prior to his election as an outside director of FRANKLIN, during his directorship or subsequent to his resignation as a director of FRANKLIN, was BORDONI responsible for any foreign currency transaction to which the BANK was a party.

15. As an outside director of FRANKLIN not involved in the internal management of FRANKLIN or the BANK, BORDONI, at or prior to meetings of the Board of Directors of the International Executive Committee of FRANKLIN, was furnished information concerning the financial condition of the BANK and FRANKLIN. BORDONI as an outside director, did not, directly or indirectly, participate in the preparation of any financial information or reports including, but not limited to balance sheets and statements of profit and loss, as required by government regulatory agencies concerning FRANKLIN or the BANK.

16. On June 21, 1974, BORDONI voluntarily submitted his resignation as a member of the Board of Directors of FRANKLIN.

17. Upon information and belief, Defendant TWIN COAST is the publisher of a national newspaper, THE JOURNAL OF COMMERCE (the "JOURNAL"), which is widely circulated throughout this judicial district and throughout the United States and the world.

18. Upon information and belief, Defendant GOLD is employed by Defendant TWIN COAST as Managing Editor and is responsible for all articles appearing in the JOURNAL.

A 7
COMPLAINT

FOR A FIRST CLAIM FOR RELIEF
AGAINST ALL DEFENDANTS

19. On or about the 26th day of June, 1974, the Defendants wilfully and maliciously printed, published and circulated throughout this judicial district, the United States and the world a certain false, defamatory, malicious and libelous newspaper article in the JOURNAL concerning BORDONI, which newspaper article is set forth herein as Exhibit A and which is incorporated by reference as if the entire newspaper article were set forth herein at length.

20. The Defendants knew at the time of the printing, publication and circulation of the said article that the statements therein concerning BORDONI were false, defamatory, malicious and libelous.

21. The printing, publication and circulation of such article by Defendants has exposed BORDONI to public contempt and scorn, thereby causing him financial injury, embarrassment and humiliation, and the said article has impeached the character, honor, credibility, integrity and professional competence of BORDONI; and for all of said reasons the said article is libelous per se.

22. The Defendants' printing, publication and circulation of the aforesaid article did proximately cause damage to BORDONI by reason of his subsequent embarrassment, humiliation and impeachment of his character, honor, credibility, integrity and professional competence and by reason of the aforesaid wilful act on the part of the Defendants knowing that the article and the statements therein concerning BORDONI were false, defamatory, malicious and libelous, BORDONI is entitled to recover exemplary damages from the Defendants in the sum of \$2,500,000.

A 8
COMPLAINT

FOR A SECOND CLAIM FOR RELIEF
AGAINST ALL DEFENDANTS

23. BORDONI repeats and realleges each and every allegation set forth in Paragraphs 1 through 19 inclusive of this Complaint with the same force and effect as if the said Paragraphs were set forth herein in full.

24. The article so published concerning BORDONI is false and defamatory, and the Defendants printed, published and circulated the said article in reckless disregard of the truth.

25. The printing, publication and circulation of such article by Defendants has exposed BORDONI to public contempt and scorn, thereby causing him financial injury, embarrassment and humiliation, and the said article has impeached the character, honor, credibility, integrity and professional competence of BORDONI; and for all of said reasons the said article is libelous per se.

26. The Defendants' printing, publication and circulation of the aforesaid article did proximately cause damage to BORDONI by reason of his subsequent embarrassment and humiliation and impeachment of his character, honor, credibility, integrity and professional competence and by reason of the aforesaid wilful act on the part of the Defendants in printing, publishing and circulating the said article and the false, defamatory, malicious and libelous statements therein concerning BORDONI in reckless disregard of the truth, BORDONI is entitled to recover exemplary damages from the Defendants in the sum of \$2,500,000.

FOR A THIRD CLAIM FOR RELIEF
AGAINST ALL DEFENDANTS

27. BORDONI repeats and realleges each and every allegation set forth in Paragraphs 1 through 19 inclusive of this Complaint with the same force and effect as if the said paragraphs were set forth herein in full.

28. The said article so printed, published and circulated concerning BORDONI is false and defamatory.

29. At the time of such printing, publication and circulation of the said article, Defendants knew or could have ascertained with the exercise of reasonable care, that the said article as it pertained to BORDONI was untrue, but instead Defendants acted recklessly and/or negligently in publishing such article without investigating the truthfulness of the statements concerning BORDONI.

30. It is well-known in the financial community that FRANKLIN is a publicly owned company whose stock was traded on the New York Stock Exchange and is required to file periodic reports with the said Exchange and various Federal regulatory agencies.

31. By the said article, the Defendants meant, intended to mean and were understood to mean, by persons reading the said article, that BORDONI had participated in criminal acts in violation of certain Federal banking statutes and other Federal statutes, rules and regulations, including but not limited to disclosure requirements to which public and banking corporations such as FRANKLIN and the BANK are subject.

A 10
COMPLAINT

32. The printing, publication and circulation of such article by Defendants has exposed BORDONI to public contempt and scorn, thereby causing him financial injury, embarrassment and humiliation, and the said article has impeached the character, honor, credibility, integrity and professional competence of BORDONI; and for all of said reasons the said article is libelous per se.

33. The Defendants' printing, publication and circulation of the aforesaid article did proximately cause damage to BORDONI by reason of his subsequent embarrassment, humiliation and impeachment of his character, honor, credibility, integrity and professional competence and by reason of the aforesaid wilful act on the part of the Defendants knowing that the article and the statements therein concerning BORDONI were false, defamatory, malicious and libelous and/or in acting in reckless disregard of the truth or negligently, BORDONI is entitled to recover exemplary damages from the Defendants in the sum of \$2,500,000.

FOR A FOURTH CLAIM FOR RELIEF
AGAINST ALL DEFENDANTS

34. BORDONI repeats and realleges each and every allegation set forth in Paragraphs 1 through 19 inclusive of this Complaint with the same force and effect as if the said paragraphs were set forth herein in full.

35. The said article so printed, published and circulated concerning BORDONI is false and defamatory.

36. The printing, publication and circulation of such article by Defendants has exposed BORDONI to public contempt and scorn, thereby causing him financial injury, embarrassment and humiliation, and the said article has impeached the character, honor, credibility, integrity and professional competence of BORDONI; and for all of said reasons the said article is libelous per se.

37. By reason of the foregoing libel on the character, honor, credibility, integrity and professional competence of BORDONI, he has been caused to suffer great mental anguish and suffering, personal humiliation, public contempt, scorn, impairment of reputation and standing in the community, disgrace and impairment of reputation among his friends, business associates and international bankers, and he has had his competence, integrity and reputation as an international banker and financial and monetary expert questioned all to his damage in the sum of \$5,000,000.

WHEREFORE, BORDONI demands judgment against all the Defendants as follows:

- (a) \$2,500,000 as punitive damages pursuant to the Claims for Relief hereinabove set forth;
- (b) \$5,000,000 for compensatory damages pursuant to the Claims for Relief hereinabove set forth;
- (c) the cost and disbursements of Plaintiff in connection with this action; and

A 12
COMPLAINT

(d) such other and further relief as this Court
may deem just and proper.

Dated: July 24, 197
New York, New York

DIFALCO, FIELD & O'ROURKE

By David A. Field
A Member of the Firm
Attorneys for Plaintiff
605 Third Avenue
New York, New York 10016
Tel. (212) 986-2434

Sindona to Follow

EXHIBIT TO COMPLAINT

A. 13

Journal of Commerce
New York, N. Y.

Italy Banker Resigning From Franklin Board

A Milan banker closely associated with Italian financier Michele Sindona, the major stockholder in Franklin New York Corp. — parent of the financially troubled Franklin National Bank — is resigning from the board of the bank's holding company, a Franklin spokesman confirmed Monday.

Carlo Bordon, a Milan banker who is director of Fasco International Holding, S.A., an investment company owned by Mr. Sindona, is leaving the board. He is the only other director of the Fasco Empire besides Mr. Sindona to sit on the Franklin Board.

Mr. Bordon's resignation prompted speculation that Mr. Sindona, who bought a 21.6 per cent stake in Franklin several years ago, might also leave the board. The New York Times said "Mr. Sindona might be withdrawing — either by plan or from pressure from the regulatory authorities — from Franklin." But the Franklin spokesman, Arthur G. Perfall, senior vice president, said there was "no indication" Mr. Sindona plans to resign.

Mr. Bordon's exit from the board also raised questions

about his role in the bank's foreign exchange trading.

Franklin disclosed last week a \$30.6 million loss for the first five months of 1974, \$15.8 million of this from foreign exchange transactions, putting the nation's 20th largest bank in financial jeopardy.

According to the Italian business magazine *Successo*, Mr. Bordon was chosen by Mr. Sindona to play a major part in Franklin's foreign exchange trading. An article in the March issue said in part, "Mr. Sindona plans to make money (at Franklin National) out of foreign currency. The presence at Franklin of the foreign exchange expert, Carlo Bordon, explains everything."

When Franklin early in May announced omission of the second quarter dividend, it disclosed discovery of large losses from unauthorized foreign exchange trading. The bank's president was dismissed and its executive vice chairman, in whose department the losses occurred, resigned. Other changes were made in the international currency department. Earlier this month, a Treasury official said the government is investigating the possibility of fraud in connection with the losses.

Should Mr. Sindona follow Mr. Bordon out of the board room, the immediate future of Franklin National could become even more clouded than it is now.

Mr. Sindona, in an effort to rescue the bank, had agreed to purchase any unsubscribed shares of two Franklin New York stock offerings designed to raise \$50 million. But in Thursday's announcement of the resignation of Harold V. Gleason as chairman of the bank and its parent company, it was disclosed the Sindona offer was made conditional on two points: "Continuation of the bank's normal business and the absence of proceedings challenging the agreement."

There have been no reports of lawsuits brought against Franklin in the interim. However, it is felt, these conditions allow the Italian financier leeway in his agreement to pump \$50 million into the holding company.

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF NEW YORK

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4 CARLO BORDONI, : 74 Civ. 3168
Plaintiff,

5 v. :

6 THE NEW YORK TIMES COMPANY, INC.,

7 A.M. ROSENTHAL and JOHN H. ALLEN, :
Defendants.

8 - - - - - x

9 CARLO BORDONI, : 74 Civ. 3169
Plaintiff,

10 v. :

11 WASHINGTON POST COMPANY, JACK EGAN :

12 and B.C. BRADLEE,

13 Defendants. :

14 - - - - - x

15 CARLO BORDONI, : 74 Civ. 3170
Plaintiff,

16 v. :

17 TWIN COAST NEWSPAPERS, INC., and :

18 HAROLD GOLD,

19 Defendants. :

20 - - - - - x

21 October 29, 1974,

22 2 P.M.

23 Before:

24 Hon. Edward Weinfeld,

25 District Judge.

Appearances:

DIFALCO, FIELD & O'ROURKE, ESQS.,

Attorneys for Plaintiff,

By: David A. Field, Esq., of Counsel.

CAHILL, GORDON & REINDEL, ESQS.,

Attorneys for Defendant New York Times,

By: Floyd Abrams, Esq., of Counsel.

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Appearances:

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WILLIAMS, CONNOLLY & CALIFANO, ESQS.,
Attorneys for Defendant Washington Post Company,
By: Joseph A. Califano, Jr., and
Charles S. Robb, Esq., of Counsel.

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AMEND & AMEND, ESQS.,
Attorneys for Defendant Twin Coast Newspapers,
By: Richard L. Schmeidler, Esq., of Counsel.

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2 THE COURT: Mr. Abrams, before you go ahead,
3 wouldn't it be more desirable for me to hear those defendants
4 who are moving to dismiss on jurisdictional grounds? I don't
5 think you have raised the jurisdictional --

6 MR. ABRAMS: I have not raised it, your Honor.

7 THE COURT: Well, two defendants have raised it
8 and I think I would like to hear that issue first because
9 if the complaint doesn't meet jurisdictional requirements,
10 I see no point if the plaintiff will be required to amend
11 in your arguing at this time.

12 Now, the court has the responsibility entirely
13 independent of counsel's position to make sure there is
14 proper jurisdiction and a proper jurisdictional allegation.

15 As I read these papers, there appears to be
16 substance to it and I am not going to hear an argument on
17 the merits of the case when the complaint is deficient
18 so far as jurisdiction is concerned.

19 MR. FIELD: If it please the Court, may I be
20 heard, your Honor?

21 THE COURT: Whom do you represent?

22 MR. FIELD: I am David A. Field, of DiFalco,
23 Field & O'Rourke, counsel for Carlo Bordoni in each of these
24 actions.

25 I assume from what you said there is a possibility

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2 you might dismiss the complaint for failure to plead
3 sufficient jurisdiction.

4 THE COURT: There is more than a possibility,
5 there is a probability. As I have read the complaint, al-
6 though it seems to me simple enough to make proper juris-
7 dictional allegations, there is a shortcoming, and the
8 Supreme Court has been very precise on the function of
9 the court to make sure there are proper jurisdictional
10 allegations.

11 Why there is any problem about it, I don't know.

12 MR. FIELD: My only comment on that, your Honor,
13 is that I presume, although I don't wish to be too pre-
14 sumptuous, that your Honor will give us the right to amend,
15 asserting proper jurisdictional grounds. If that be so,
16 the complaint would be essentially the same complaint we now
17 have before the Court.

18 THE COURT: It may be, but I have a responsibility
19 here and it has been thrust upon me by what I call a some-
20 what inartistic pleading if the jurisdictional factual
21 underpinning does exist. If it does exist, I don't know
22 what the problem was in not drafting the complaint properly.

23 MR. FIELD: Of course, if your Honor feels power-
24 less to review the rest --

25 THE COURT: I am not going to review any motion on

Stenographer's Transcript dated October 29, 1974

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2 the merits where obviously if there is lack of jurisdiction
3 the complaint has to be amended. It isn't proper procedure
4 and I won't indulge in it.

5 Since the defendant did raise the jurisdictional
6 question, that is it.

7 MR. FIELD: Would your Honor, if other counsel
8 agreed to a stipulation to an amendment of the complaint to
9 allege jurisdictional grounds, hear the balance of the motion?

10 THE COURT: Yes, if they agree upon it, if they
11 will allow you to amend your complaint right in this
12 argument so the jurisdiction is established and they make
13 no motion directed to jurisdiction.

14 MR. FIELD: May we have five minutes, your Honor?

15 THE COURT: Yes, and the court will take a recess
16 in the meantime.

17 (Recess)

18 MR. FIELD: Your Honor, we met outside the courtroom
19 and the defendants in each of the three cases have agreed
20 with us that we may amend now the allegations as to juris-
21 diction. If you like, your Honor, I will read the amendments
22 with reference to The New York Times case.

23 Paragraph 3 is amended to read as follows: "Upon
24 information and belief, the defendant New York Times
25 Company (Times) is a corporation organized and existing

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2 under the laws of the State of New York and maintains its
3 principal place of business at 229 West 43rd Street, New
4 York, New York, and is doing business within this judicial
5 district."

6 Paragraph 4: "Upon information and belief,
7 defendant A.M. Rosenthal (Rosenthal) is a citizen and
8 resident of the State of New York, is an employee of the
9 defendant Times and has its offices at 229 West 43rd Street,
10 New York, New York, and may be found within this judicial
11 district."

12 Paragraph 5 is amended to read: "Upon information
13 and belief, defendant John H. Allen (Allen) is a citizen
14 and resident of the State of New York, is an employee of
15 the defendant Times, and has its offices at 229 West 43rd
16 Street, New York, New York, and may be found within this
17 judicial district."

18 If your Honor please, with respect to the other
19 two complaints, I will read at the time we argue the motions
20 or whatever your Honor prefers.

21 THE COURT: I should say this. You gentlemen wrote
22 a letter to the court suggesting that under our local rules
23 it be assigned to one judge. As you know, I agreed to take
24 the assignment because the case assigned to me was the first
25 one. I wasn't aware of the fact that there were different

Stenographer's Transcript dated October 29, 1974

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publications here and it seems to me that they may raise different issues, but as long as I have agreed to take them, I will allow them to remain. I take it that the basis of your jurisdiction then is diversity?

MR. FIELD: Yes, your Honor.

THE COURT: This means that in the case against The New York Times, the law of the State of New York would apply?

MR. FIELD: That is correct, your Honor.

THE COURT: Who are the other defendants? In the case against the Washington Post, what law applies there?

MR. FIELD: The Washington Post Company, which is the publisher, I understand has its principal place of business in New York City, although it is a Delaware corporation.

THE COURT: Where was the publication?

MR. FIELD: I think the publication was in this judicial district as well as Washington, D.C.

THE COURT: Who are the other separate defendants?

MR. FIELD: The Journal of Commerce, your Honor, which we believe is a New York corporation. The publication was made here in New York and we are not concerned with the case against the Wall Street Journal because they have not made any motion at this time.

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2 THE COURT: All right.

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3 MR. ABRAMS: Your Honor, the Court has been served
4 with a barrage of briefs in all three cases and I think
5 I can keep my argument to a minimum, in light of the
6 briefing of both parties in The New York Times case. I
7 think it might be useful to outline at the beginning that
8 this case which arises out of a publication in the Times
9 on June 24, 1974, of an article which I am holding in my
10 hand with respect to --

11 THE COURT: I couldn't read it -- I wish lawyers
12 would serve legible copies, although you had the text of
13 it in your brief. You should look at your papers before
14 you submit them so you can submit clean copies.

15 MR. ABRAMS: I will. I am sorry.

16 The article is attached to the complaint and
17 it is quote in our memorandum of law and the charge against
18 the Times sounds in libel per se, but the parties are
19 agreed that the complaint does not allege or purport to
20 allege special damages and that, therefore, if it does not
21 properly sound in libel per se, that it should be dismissed.

22 The parties are also agreed, I think it is fair
23 to say, that the approach that should be taken by the Court
24 in reading the article is to read it as a whole, and the
25 New York cases so state.

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2 I also think it is agreed, although somewhat
3 less clearly, that the heart of plaintiff's contentions
4 with respect to the Times relate to the innuendos which he
5 draws from the article and which in one case is asserted in
6 the complaint and in all other cases is asserted in the
7 memorandum of law of the plaintiff. The one allegation as
8 to which there is an innuendo pleaded in the complaint is
9 in paragraph 33 of the complaint, which states that the
10 Times article alleges that Bordoni had participated in
11 criminal acts in violation of certain federal banking
12 statutes --

13 THE COURT: Pardon me. What paragraph?

14 MR. ABRAMS: Paragraph 33, your Honor.

15 THE COURT: Go ahead.

16 MR. ABRAMS: In paragraph 33 the allegation is
17 made that by the article the defendants meant, intended to
18 mean by persons reading the said article that Bordoni had
19 participated in criminal acts in violation of certain federal
20 banking statutes and other federal statutes, rules and
21 regulations, including but not limited to disclosure
22 requirements to its public and banking corporation to which
23 Franklin and the bank are subject.

24 That is the only allegation in the complaint of
25 an innuendo which plaintiffs pleaded in their complaint.

1 rnh

2 I will turn to that one first.

3 It seems to us, by a simple reading of paragraph
4 33 of the complaint against the article in question, that
5 one can conclude, and your Honor should conclude, that
6 the Times article makes no reference and draws no inference
7 with respect to federal law, to disclosure requirements,
8 banking laws of any sort, that there is simply no way that
9 the Times article can be said to permit the innuendo which
10 is stated in paragraph 33. We have cited much case law in
11 our brief to the effect that innuendos may not expand upon,
12 may not enlarge upon that which is in fact in an article
13 said to be libelous per se.

14 We maintain that that is precisely what is
15 occurring here and on the basis of many cases we cited,
16 most of which involve far less egregious attempts at
17 expansion than here, that it should not be permitted.

18 This was the only paragraph of the complaint which
19 pleads an innuendo. With respect to the rest, plaintiff's
20 brief attempts to set forth what it is that the Times
21 article is said to infer.

22 THE COURT: Don't I decide this on the basis of
23 innuendo alleged in the complaint?

24 MR. ABRAMS: Yes, your Honor, it seems to us
25 you must decide it on the basis of the complaint alone and

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the case law is clear that with respect to paragraph 33 you are entitled to, and indeed you must, compare paragraph 33 with the article.

With respect to all the other innuendos, the law is clear, and we cite cases for the proposition, that the plaintiff's brief cannot try to state an innuendo not stated in the complaint.

There are no other innuendos stated in the complaint and that being so, one is put back on the words of the articles themselves, what the Appellate Division for the Third Department not so long ago called the naked words of the article itself. Those naked words are all before the Court. I won't go into them in any length, because they are amply briefed. The crux of what the Times says about the resignation of the plaintiff here is that, and I am reading from the article, "Whether the Bordoni resignation was merely a part of the foreign exchange house cleaning or part of the downgrading of Mr. Sindona's influence at Franklin could not be determined." That is not anything which states a count in libel per se, and I won't even proceed to the innuendos which plaintiff has alleged it is suggestive of. There is no basis and I don't know that plaintiff maintains that apart from the innuendos he would try to attach to this, that that does state a course

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2 of action in libel per se.

3 The same I think may be said for the rest of
4 the allegations in the plaintiff's complaint as put against
5 the article itself.

6 The plaintiff does contend the matters are to
7 be decided by juries and not by judges. Yet, as the Tracy
8 case cited in our reply brief demonstrated, a case involving
9 Newsday, and other cases cited by us, and I quote, "In
10 brief, the question which an innuendo raises, is, in all
11 cases, a question not of fact, but, and innuendos," the
12 court said there, may not enlarge upon the meaning of words
13 so as to convey a meaning that is not expressed."

14 We have a lot of examples in this case --

15 THE COURT: Well, you say it is a question of
16 logic, but the cases say it is a question of law to be
17 determined by the court.

18 MR. ABRAMS: Yes, your Honor, and we have cited
19 cases to that effect.

b3 20 The classic cases which are libel per se are
21 contained directly in plaintiff's own briefs. They are
22 cases such as the Moore case, in which someone is said to be
23 mentally deranged, a case in which a businessman is accused
24 of "extravagance" in his business dealings; the Ed Sullivan
25 case, an old 1931 case in the New York State courts, in

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2 which it was said of Ed Sullivan, "He should hop back into
3 Primo Carnera's left shoe, Eduardo, until I read you again,"
4 in effect accusing Ed Sullivan of being a press agent for
5 Primo Carnera.

6 There are cases where plaintiff is accused of
7 "reckless speculation," a bank accused of "inaccurate
8 accounting," and of an individual said to have been a former
9 Daily Worker editorial writer, employee, and a campaign
10 manager for a Communist Party candidate.

11 THE COURT: Was this Gerson, if I remember?

12 MR. ABRAMS: Yes, your Honor.

13 THE COURT: That goes back a long time.

14 MR. ABRAMS: It is our contention before your
15 Honor that the Times article is not defamatory, it simply
16 doesn't state anything which can be the basis of a libel suit.
17 Beyond that, we maintain the innuendos stated in the memo-
18 randum of law may not be considered but your Honor must
19 consider the article itself taken as a whole as against the
20 body of libel law we have cited to you.

21 Finally, we have relied upon the so-called single
22 instance rule and we have argued that at the very most
23 what the Times article can by any inference be said to have
24 inferred is that Mr. Bordoni was the director of the
25 parent company of the Franklin National Bank and gave

1 incorrect advice with respect to investing in foreign
2 exchange transactions. In our main brief we cited one
3 case, the Arnold-Bernard case, an article that indicated
4 that the plaintiff had advised the public to invest in a
5 particular stock which had gone bad, and that case says
6 this, the article referred to at most one arguably in-
7 correct decision and even if the Court should hold that the
8 complaint states a cause of action in libel per se, which
9 we maintain it does not, plaintiff still would have been
10 obliged to plead special damages. He has not, your Honor,
11 and on that ground as well we urge the Court to dismiss
12 the complaint.
13

14 MR. FIELD: If it please the Court, we believe
15 that in determining whether an article is libelous per se
16 as to any particular individual, the Court must look to
17 who this individual is. If Mr. Bordoni were a prize fighter,
18 the article would not be libelous to him, but we have
19 alleged and for the purposes of this motion the defendants
20 have admitted that Mr. Bordoni is an international banker
21 of solid reputation. He has been involved in the field for
22 many years. We have also stated, and for purposes of this
23 motion it is admitted by the defendants, that Mr. Bordoni
24 had nothing at all to do with the responsibility for the
25 foreign currency exchange transactions of the Franklin

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With that in mind, your Honor, we must look at the article to see whether or not it does defame Mr. Bordoni in his business reputation or competence, in addition to the fact as to examining it as to whether or not it does by innuendo indicate that he may be guilty of violating some federal statute or some regulation of a federal agency.

THE COURT: Is there any particular portion of this article you can point to which you suggest warrants the innuendo that you attribute to the article taken as a whole?

MR. FIELD: With respect to the criminality, your Honor. There is a part in the article, on page 6 of our brief --

THE COURT: I am referring to your paragraph 33. You state that by the article, and you are familiar with the paragraph Mr. Abrams read, defendant meant, intended to mean or understood to mean by persons reading the said article that Bordoni had participated in criminal acts in violation of the federal banking statutes and other federal statutes, rules and regulations, including but not limited to disclosure of claims which public and banking corporations such as Franklin are subject.

Which specific portions of this article do you say

warrant the innuendo?

MR. FIELD: Your Honor, first, if I may precede my answer with a statement that the Washington Post is a sophisticated newspaper --

THE COURT: We are talking about the Times?

MR. FIELD: I am sorry, The New York Times. I was afraid I would make that mistake this afternoon.

THE COURT: It is just too bad that -- I must take the responsibility myself, that I didn't have the complaints, because each case is a separate case, really, and they are not related cases simply because they are libel suits, but it is done and that is it.

MR. FIELD: With respect to the New York Times, your Honor, certainly the interests in the Franklin Bank's activities was one in which businessmen-bankers would be very much concerned and they are basically the people to whom this article is directed.

With that in mind, your Honor, the article does say, "This loophole, coupled with Mr. Bordoni's resignation"--

THE COURT: What page is that? That is talking about Mr. Sindona, not about Mr. Bordoni?

MR. FIELD: Well, it is, yet, your Honor, the article indicates that Mr. Bordoni is closely linked to Mr. Sindona.

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2 THE COURT: Well, you say -- all right, let's
3 stick with that. You say, "This loophole, coupled with Mr.
4 Bordoni's resignation, heightened the impression that Mr.
5 Sindona might be withdrawing, either by plan or from
6 pressure from the regulatory authorities, in Franklin."

7 Do you suggest that conveys the idea of criminal
8 conduct or prospect of criminal prosecution?

9 MR. FIELD: In all candor, your Honor, I must say
10 if we just take those words and divorce them from the article,
11 no, but in the context in which it was written --

b4 12 THE COURT: I know what the law is, I take the
13 article as a whole, but you don't say take the article
14 as a whole and disregard the specific items.

15 What else is there?

16 MR. FIELD: With respect to that particular
17 instance that your Honor has stated, other than making
18 the statement that the Federal Government Insurance Corpora-
19 tion is in the picture, there is nothing else, but --

20 THE COURT: Am I correct, Mr. Field, that your
21 innuendo pretty much centers about this paragraph, or
22 actually two paragraphs, headed "Sindona has loophole,"
23 taken together with the rest of the article?

24 MR. FIELD: That is correct, your Honor.

25 THE COURT: But you must refer to these two

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2 paragraphs. In other words, if you didn't have these two
3 paragraphs, there wouldn't be a basis for any innuendo?
4 I think you would have to agree with that?

5 MR. FIELD: Not as to criminality, your Honor.

6 THE COURT: Well, what else do you claim?

7 MR. FIELD: We claim that the article in the
8 beginning, in stating that Mr. Bordoni played an important
9 role in pushing the Franklin Bank into foreign exchange
10 trading in a major way and then followed by the statement
11 that it was the foreign exchange trading that the Franklin
12 lost 45.8 million dollars on, is certainly an imputation
13 on Mr. Bordoni's ability and business expertise, if he
14 was the one responsible for the pushing. The word "pushing"
15 is a very volatile word. It doesn't mean that he suggested,
16 it means that he actually forced the bank --

17 THE COURT: What paragraph is that?

18 MR. FIELD: It is the second paragraph of the
19 article, your Honor. It starts, "The man leaving the board
20 is Carlo Bordoni, a Milan banker and director of Fasco
21 International, who played an important role in pushing--

22 THE COURT: I don't see that-- oh, I see.

23 MR. FIELD: We underscored in our brief those
24 portions we felt applied to Mr. Bordoni. That is on page 4
25 of our brief.

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The pushing, your Honor, giving the ordinary dictionary term, which we have cited in our brief, according to Webster's Seventh New Collegiate Dictionary, "marked by tactless forwardness of officious intrusiveness. See aggressive," and the word "push" means to press against opposition.

They are really saying Bordon is to blame for these foreign currency transactions. That is the normal and ordinary meaning that would be ascribed to those words.

Mr. Bordoni's ability to act in the international banking field depends upon his character and integrity being unimpeachable and in his transactions not being defamed.

The defamation that occurred here was in ascribing to him this tremendous loss incurred by the Franklin Bank, which was not merely one transaction, your Honor, but a series of transactions over a substantial period of time. Since Bordoni was on the board of directors of the Franklin Bank and these foreign exchange transactions occurred over the period of a year to a year and a half, they were continuous. So his pushing denotes a continuous act on his part to continue the Franklin Bank into these various transactions.

The important role which they say Bordoni played

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2 is one not merely that he was on the board of directors
3 but one who possibly championed this and one of influence
4 or importance who played a crucial part in having the bank
5 go into these foreign currency transactions.

6 The articlesays "In a major way." Now, a major
7 way means a commitment, really a major, substantial commitment
8 on the part of the bank, and the amount of the loss speaks
9 for itself as to the amount of foreign currency trade that
10 must have been conducted by the bank during this period of
11 time. If he had nothing to do with the foreign currency
12 transactions, which is admitted by the defendants, then
13 certainly the clear words here indicate that the man so far
14 as his business integrity has been defamed and it is
15 libelous per se.

16 If it is libelous per se, we need not plead special
17 damages. I think we are all agreed basically as to what
18 the law is, I think we all say we concede the law to be
19 a shoe, but the defendants say it doesn't fit Bordoni's
20 foot. We think it does. We think it is elastic, adjustable,
21 and we think the facts here, particularly the statements
22 in the articles and in view of today's climate of investi-
23 gations and fraud by public officials, by people in business,
24 the Equity Funding scandal, the Watergate situation, that
25 an ordinary reader would pick up this article and say, "This

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2 fellow Bordoni did all these transactions and was responsible
3 for the losses."

4 With respect to the innuendo, your Honor, we
5 don't feel the cases cited by the defendant require us to
6 plead the innuendo any more than we have done in the
7 complaint.

8 They have cited two cases in their reply brief,
9 which we just received, either last night or this morning,
10 and the two cases that they have are easily distinguishable
11 from the case at bar.

12 In one case, the Rowe case, the article did not
13 defame the plaintiff in the trade or business, and the court
14 did not state that the innuendo should necessarily be pleaded
15 in the complaint.

16 The other one, the Cole-Fisher case, the plaintiff
17 was not even named in the article and he said, "But by
18 innuendo this article applies to me," and the court said,
19 "Well, you should plead it," but didn't say it was a
20 necessity to plead it.

21 In the case before the Court, Bordoni was named
22 and it was laid at his feet, the substantial loss incurred
23 by the bank, and he was very substantially damaged as a
24 result of this article.

25 MR. ABRAMS: Your Honor, can I make one comment?

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1 Mr. Fields made reference to the climate in which we live
2 today and it does seem to me that it is worth saying that
3 it is very important that newspapers be encouraged,
4 permitted and not subject to libel recoveries or libel
5 lawsuits for getting into this area of investigative re-
6 porting, when they do, and financial reporting, when they
7 do. There is no nice story that is as current or as large
8 in America today as the economy. This was a big story-re-
9 ported we think accurately and well. We don't admit that
10 Mr. Field finds any inaccuracy in it, but it is very im-
11 portant in the cases, such as New York Times v. Sullivan,
12 which make clear the degree to which the press must be
13 free to go out and get stories and report them in an un-
14 inhibited way. We think libel suits as to stretching words
15 to mean things they didn't say challenges the same kind of
16 principle, albeit in a different way, that the Sullivan
17 case was --

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19 THE COURT: Is there any issue here on Sullivan v.
20 New York Times?

21 MR. ABRAMS: No, your Honor, except I think it is
22 fair to respond to the climate argument by saying the
23 climate ought to be the First Amendment climate which the
24 Sullivan case in its area set forth. If this case goes on,
25 it will be our position that Mr. Bordoni is a public figure

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2 and all those rules apply.

3 MR. FIELD: Your Honor, if I may add one or two
4 words, I am sure your Honor is aware of the recent case of
5 Welch v. Gertz, which gives the private citizen, not a
6 public figure, the right to sue for libel.

7 THE COURT: There is always an issue of whether
8 or not the plaintiff is a public figure within the
9 definition of the various cases. Would there be any question
10 in the light of the allegations you made in your complaint
11 that he is a public figure? Isn't that part of your claim?
12 You build him up as a big international banker; you can't
13 have it both ways, can you?

14 MR. FIELD: First, that is not at issue in this
15 motion, your Honor, and, secondly, we do not feel a man is
16 a public figure because he may be an expert in his particular
17 field and I think that would be a question for the jury to
18 decide if this case ever gets that far, survives this motion.

19 With respect to jury cases, your Honor, Sanderson
20 v. Caldwell, a New York Court of Appeals case, said, "If
21 the words are capable of a construction which would make
22 them actionable although at the same time an innocent sense
23 can be attributed to them, it is for the jury to determine
24 upon all the circumstances whether they apply to the
25 plaintiff and in what sense they were used."

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2 It appears to me that the defendant must convince
3 your Honor that our complaint is so unreasonable that your
4 Honor must say as a matter of law there is no possible way
5 it could be libelous per se, otherwise I believe your
6 Honor must dismiss the motion and say it is a question for
7 the jury to decide based upon the whole article and under
8 the circumstances whether it is libelous per se.

9 THE COURT: I would like in the light of argument
10 by Mr. Field any other cases that you may have, Mr. Abrams,
11 on whether or not at this stage of the proceeding this is
12 an issue of law to be decided by the court.

13 MR. ABRAMS: I would like to refer to the case
14 of Tracy v. Newsday, 5 New York 2d, 134, which was a New
15 York Court of Appeals case, 1959, and just read one paragraph
16 to the court:

17 "The general rule as we stated in Nichols v. Item
18 Publishers is that a writing is defamatory, that is,
19 actionable without allegation or proof of special damages
20 if it tends to expose a person to hatred, contempt or
21 aversion, or to induce an evil or unsavory opinion of him
22 in the minds of a substantial number in the community,
23 even though it may impute no moral turpitude to him. And
24 to that listing of the defamatory should be added a writing
25 which tends to disparage a person in the way of his office,

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2 profession or trade. It is for the court, however, to
3 decide whether a publication is capable of the meaning
4 ascribed to it," and citing cases, "The canons are well:
5 known that where the words are clear and plain, the court
6 must determine whether they are libelous or non-libelous;
7 and whether the innuendo is necessary."

8
9 THE COURT: That doesn't answer what I asked you.
10 I asked you in terms of the innuendo, who decides that, and
11 you just read a general statement of law as to what con-
12 stitutes libel per se and the cases are legion with that
13 very quote you referred to, with the addition --

14 MR. ABRAMS: I stopped too soon, your Honor.
15 The paragraph concludes with respect to innuendo, "The
16 admitted purpose of an innuendo is to explain matters
17 that is insufficiently expressed. Its office is to point
18 out the libelous meaning of the words used. If the article
19 is not susceptible of a libelous meaning, then innuendo
20 cannot make it libelous."

21 In one case the court stated the rule in this
22 manner, "In brief, the question which an innuendo raises
23 is, in all cases, a question not of fact, but of logic.
24 It is, simply, whether the explanation given is a legitimate
25 conclusion from the premise stated; and to determine this
question, must be, in all cases, the exclusive province of

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2 the court."

3 We think that case is responsive, your Honor,
b6 4 and we have cited others as well.

5 THE COURT: I must say, in all candor, from
6 some little experience I have had with this field that
7 sometimes the cases under New York law are not as definitive,
8 as sharply defined as they might be. I say that with the
9 greatest respect to the highest court of the state.

10 MR. ABRAMS: Having just come to read them, I
11 cannot quarrel with that, your Honor.

12 THE COURT: I had this experience in the Reynolds-
13 Pegler case, trying to decide what the law of New York
14 State was.

15 What is the next motion, gentlemen? Decision
16 reserved.

17 Are all your papers in in this matter?

18 MR. ABRAMS: Yes, your Honor.

19 (Pause)

20 MR. FIELD: If it please the Court, we have amended
21 by stipulation orally between counsel for the plaintiff
22 and defendants with respect to jurisdictional allegations
23 as follows:

24 Paragraph 3 is amended to read: "Upon information
25 and belief, defendant Washington Post (Washington) is a

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2 corporation organized and existing under the laws of
3 Delaware and maintains its principal place of business
4 at 430 Madison Avenue, New York, New York, and an office
5 in Washington, D.C., and is doing business within this
6 judicial district."

7 Paragraph 4 is amended to read, "Upon information
8 and belief, defendant Jack Egan (Egan) is a citizen and
9 resident of Washington, D.C., is an employee of defendant
10 Washington and has his office at 1150 15th Street Northwest,
11 Washington, D.C., and is doing business within this judicial
12 district."

13 Paragraph 5 is amended to read, "Upon information
14 and belief, defendant B.C. Bradlee (Bradlee) is a citizen
15 and resident of Washington D.C., is an employee of defendant
16 Washington and has its offices at 1150 15th Street Northwest,
17 Washington, D.C., and is doing business within this judicial
18 district."

19 MR. CALIFANO: If your Honor please, my name is
20 Joseph Califano, a member of the firm of Williams, Connolly
21 & Califano, of Washington, D.C., and I am a member of the
22 bar of the Southern District.

23 May it please the Court, I will rest on the law
24 as Mr. Abrams has stated it and I think the agreements
25 with respect to the law and the issues are fairly well set

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2 out in the discussion Mr. Aorams and Mr. Field had.

3 I would like to give the story of the Washington
4 Post itself --

5 THE COURT: What law do you say applies in this
6 diversity action?

7 MR. CALIFANO: We believe it is the law of the
8 State of New York, that we are all under the law of the
9 State of New York.

10 THE COURT: Where was the publication?

11 MR. CALIFANO: The Washington Post is published
12 largely in Washington D.C. That is where its major circula-
13 tion is, but there are-- a ballpark figure -- at least
14 2,000 copies a day coming into New York City, for example.

15 THE COURT: Have you agreed upon that, Mr. Field,
16 that the law of New York State applies?

17 MR. FIELD: Yes, your Honor.

18 MR. CALIFANO: Your Honor, the plaintiff Bordoni
19 complains of two Washington Post stories, the first running
20 on Saturday, June 22nd, an article headlined "Merger plan
21 for Franklin far advanced," a 17-paragraph story, four of
22 the paragraphs of which dealt with Mr. Bordoni, and the
23 second article ran on Wednesday, June 26th, and was headlined,
24 "Deals aimed at profits for Franklin." That was a 16-paragraph
25 story, four paragraphs of which dealt with Mr. Bordoni.

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2 With respect to the first Washington Post story,
3 the story of June 22nd, the allegations are both with respect
4 to the words of the story itself, which we contend do not
5 constitute libel per se and, again, a single innuendo
6 is alleged in paragraph 13 of the complaint relating to a
7 virtually the same as The New York Times innuendo, saying,
8 "By said article the defendants meant, intended to mean
9 and were understood to mean by persons reading the said
10 article that Bordoni had participated in criminal acts
11 in violation of certain federal banking statutes and other
12 federal statutes, rules and regulations, including but
13 not limited to disclosure requirements to which public
14 and banking corporations such as Franklin and the bank
15 are subject."

16 With respect to the June 22nd article, I would
17 submit there is nothing in the Washington Post story
18 that would lead to that innuendo. The four paragraphs
19 dealing --

20 THE COURT: Which are the four paragraphs?

21 MR. CALIFANO: Paragraphs 7 through 10 of the
22 story, your Honor.

23 THE COURT: Starting "Bordoni, a Sindona intimate" --

24 MR. CALIFANO: No, the paragraph before that,
25 your Honor, "It was also learned yesterday" --

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2 The first part of the story, the first six
3 paragraphs, deal with the merger and the banks and the
4 consideration of the possibility of a merger with Franklin.
5 Then the story has four paragraphs on Bordoni. The first
6 one says, "It was also learned yesterday that Carlo Bordoni,
7 a director of Franklin New York Corporation, holding
8 company for the bank, resigned at the board's request on
9 Thursday although this has not been publicly announced."
10 That paragraph we contend clearly under the New York State
11 law does not constitute libel per se. There are cases
b7 12 cited in our brief and I would mention the Nichols case,
13 which involved the removal of a pastor against his will,
14 and the Loudon case, which involved the report of the
15 discharge of an individual employed by Mohawk Aircraft
16 Corporation for certifying a pilot who should not have
17 been certified.

18 In both those cases, your Honor, the reports
19 of the forced removal of the pastor and the report of the
20 discharge of the Mohawk employee for improperly certifying
21 a pilot, both of those reports were taken as false and
22 in both cases the New York courts held they did not
23 constitute libel per se.

24 Here we do not say he was discharged, we say
25 he resigned at the board's request, and there are obviously,

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2 particularly in the world of corporations and international
3 banking, any number of reasons why a man could resign,
4 policy disputes, other interests, a change in the operation
5 of the bank, moving away from their recent involvement in
6 foreign exchange transactions.

7 The second paragraph which refers to Bordoni
8 says, "Bordoni, a Sindona intimate and involved in multiple
9 business enterprises in Sindona's far flung financial web
10 was formerly a foreign exchange trader with an international
11 reputation for the scale of his speculation."

12 Your Honor, there I would cite the Labouisse,
13 L-a-b-o-u-i-s-s-e, case, cited in our brief, in which
14 a man was accused of speculating largely in the cotton
15 market in order to capture it and totally control it, and
16 that was held to be not libelous per se.

17 I would also note that that paragraph, as others
18 here, must be read against this complaint in the sense that
19 the complaint alleges that Mr. Bordoni is quite a man in
20 the foreign exchange area. It says in paragraph 11 that
21 Bordoni has dealt, after listing foreign as well as domestic
22 banks with which he is associated -- "Bordon has dealt with
23 some of the largest banks in the world in the areas of
24 international banking" --

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THE COURT: I don't see that. The next paragraph

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2 reads, "Bordoni has" --

3 MR. CALIFANO: I was going to the complaint, your
4 Honor. I will go through the paragraphs of the story first.

5 The next paragraph says, "Bordoni has been credited
6 with organizing Franklin's foreign exchange department
7 when Sindona purchased 22 per cent of the bank's stock in
8 1972 and introducing his own style of high-volume foreign
9 exchange speculation."

10 I would mention with respect to that, those two
11 paragraphs, the one I just read and the one I mentioned
12 before -- those I would like to compare with the language
13 of the complaint, certain paragraphs in the complaint.

14 Paragraph 11, in which plaintiff alleges after,
15 as I said in prior paragraphs, listing Mr. Bordoni's various
16 international banking associations -- paragraph 11, "Bordoni
17 has dealt with some of the largest banks in the world in
18 the areas of international banking and monetary transactions
19 and among other things was responsible for the founding
20 and growth of the Milan branch of First National City Bank
21 and the growth of Banca Unione."

22 In paragraph 12, the plaintiff alleges that on
23 or about August, 1972, and it is 1972 that is the date to
24 which the Washington Post story attaches, Bordoni introduced
25 the style of the bank -- "On or about August, 1972, Bordoni

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2 was elected an outside member of the board of directors
3 of Franklin New York Corporation, a holding company whose
4 principal subsidiary is Franklin Bank. In addition, since
5 1972, Bordoni has been a member of Franklin's international
6 executive committee which is composed of certain members of
7 the board of directors of Franklin National Bank."

8 Then in paragraph 14 of the complaint, your Honor,
9 "Due to his reputation, financial and banking acquaintances
10 and contacts in the European financial community, Bordoni
11 assisted in the placement of approximately 750,000,000,
12 almost three-quarters of a billion, Eurodollar funds into
13 London, England, Nassau and Bahamas and branches of the
14 bank."

15 Your Honor, I would suggest that reading the
16 story against the complaint it is fair to say that Bordoni
17 has his own style of high volume foreign exchange specula-
18 tion and there is nothing inappropriate, no suggestion--

19 THE COURT: How do you read "a high scale of
20 speculation" in those paragraphs you read?

21 MR. CALIFANO: I don't see "high speculation,"
22 your Honor. It says "high-volume foreign exchange specula-
23 tion." I think foreign banks speculate in foreign exchange
24 the way individuals speculate in the stock market. There
25 is nothing derogatory about those words.

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2 THE COURT: That is the argument you made before,
3 but in reading these paragraphs all that really conveys
4 is that he is engaged in rather substantial transactions
5 in the international financial world and evidently plaintiff
6 may be resting something on the fact that you refer in
7 the second paragraph to, "With an international reputation
8 for the scale of his speculation," and in the subsequent
9 paragraph, "in introducing his own style of high-volume
10 foreign exchange speculation."

11 You say paragraph 14 suggests speculative
b8 12 activities?

13 MR. CALIFANO: I suggest there is nothing
14 derogatory about that, your Honor.

15 THE COURT: I understand that argument.

16 MR. CALIFANO: Your Honor, I suppose--

17 THE COURT: You are saying in this day and age
18 in the financial world if you refer to a man as being
19 engaged in active financial speculation, whether in
20 commodities, shares, Eurodollars or anything else, this is
21 nothing of an opprobious nature?

22 MR. CALIFANO: That's right. I suppose the
23 complaint goes to the fact that there is certainly high
24 volume activity involved in the numbers and levels in
25 plaintiff's complaint.

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2 The last paragraph in the June 22nd story says,
3 "Bordoni's exit follows the firing of a foreign exchange
4 trader who the bank charged with falsifying records and
5 hiding transactions. In addition, the head foreign
6 exchange trader for Franklin and the executive vice
7 chairman in charge of this area resigned," and then in
8 the following paragraph it is noted that the president of
9 the board, Mr. Gleason, resigned.

10 I suggest, your Honor, that paragraph is carefully
11 written. The person whom the Frankly identified as falsifying
12 records and hiding transactions is obviously not Mr.
13 Bordoni, it is another foreign exchange trader. There
14 is nothing to imply that Mr. Bordoni was involved in any
15 activity of that kind.

16 With respect to the June 26th story, which is
17 the second story that plaintiff complains of, I would
18 refer the Court to paragraphs 12, 13, 14 and 15, which are
19 the four paragraphs that deal specifically with Mr.
20 Bordoni.

21 Before reading those paragraphs, I would like
22 to note that the lead sentence and the lead of the story
23 of June 26th, which, as the Court has indicated, the stories
24 must be read as a whole, says, "Italian financier, Michele
25 Sindona, Franklin National Bank's largest shareholder, may

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2 have directed foreign exchange transactions to Franklin
3 in 1973 and early 1974 from other foreign banks the controls
4 in order to guarantee a profit for Franklin, federal
5 investigators said today." Note that when the writer of
6 the story in the Washington Post wanted to state somebody
7 has done something, has directed a transaction, he states
8 it quite clearly.

9 THE COURT: I have one question to ask you. I
10 have looked down these allegations for the paragraphs
11 referred to here, and could the plaintiff reasonably argue
12 with respect to the last paragraph, "Bordoni is credited
13 with organizing Franklin's foreign exchange operations in
14 1972 and introducing the high-volume speculative style he
15 has been noted for and which some observers feel he got
16 the bank into trouble" -- would that be an adverse reflection
17 upon his capacity as an international banker, the sentence
18 I just read to you?

19 MR. CALIFANO: Your Honor, I would note two things
20 about that, one, as in the prior article, the involvement
21 of Bordoni is the involvement of setting the style of
22 operations in 1972, two years before these events took
23 place, and these events we are talking about in terms of
24 losses are the first five months of 1974, and when Bordoni's
25 activities are mentioned in either of these Washington Post

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stories they are keyed directly to 1972, which is the time when Mr. Bordoni joined the bank, according to the complaint, went on the international executive committee, according to the complaint, and it was presumably subsequent to the period when he joined the bank that he was involved in placing the three-quarters of a million dollars in Eurodollars.

With respect to the second portion of that, namely, "And which some observers feel got the bank into trouble," I handle it at several levels: One, there are specific statements, there is a specific statement in this story that nothing illegal was done" --

THE COURT: Where is that?

MR. CALIFANO: That statement appears, your Honor, in the fifth paragraph of the story.

THE COURT: It says "he." Who is the "he"?

MR. CALIFANO: He is a source, presumably a federal investigator, although I do not know, a government source of some kind, apparently. He added, "There might be nothing illegal in any of this as far as the Franklin is concerned, although he said he did not know if the parties involved on the other side of the foreign exchange trades" -- I would also note that phrase must be read in the context of the first paragraph referring to Bordoni.

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2 in this article, which says, "The source confirmed that
3 the Comptroller of the currency was looking into the in-
4 volvement of Carlo Bordonì in Franklin's foreign exchange
5 operations but said this was not related to his evaluations
6 of transactions related to recent losses."

7 THE COURT: I just saw an article and I wonder
8 why you have not mentioned this, because apparently the
9 plaintiff, I don't know, but I suspect, will make a referen
10 to this so-called speculative emphasis, "foreign exchange
11 transactions are basically speculations on the future
12 movements of currencies."

13 I am suggesting the very nature of the foreign
14 exchange, according to this article, is speculative.

15 MR. CALIFANO: Well, your Honor, that paragraph,
16 which is a paragraph in the story, which is explaining
17 to the reader, as you go on -- I must read it in the contex
18 of the next two or three sentences -- is to explain to the
19 reader what a man does in terms of speculation: when he
20 invests in the foreign market, as you have no doubt read,
21 a trader will buy for future delivery currency at a sub
22 price in the hopes that it will go up. He will sell a
23 currency with a future delivery in the expectation that
24 it will go down. In either case, he makes a profit. If
25 a currency proves contrary to expectations, it produces

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2 a loss.

3 I would suggest, your Honor, that the speculations,
4 those following sentences explaining exactly what the word
5 "speculation" means.

6 THE COURT: It is buying futures?

7 MR. CALIFANO: Yes, which is commonly called
8 speculation throughout the entire business community
9 every day in the New York Times, the Washington Post, the
10 Journal of Commerce, the Wall Street Journal, and it is
11 certainly not a derogatory term.

12 I would like to note also, your Honor, with
13 respect to the remaining paragraphs in the June 26th story
14 that mention Mr. Bordoni that the second paragraph, which
15 mentions him simply restates what has already been said,
16 "Bordoni a former foreign exchange trader, is involved
17 in many of Sindona's enterprises. He was put on the board
18 of Franklin Holding Company for the bank in 1972. He
19 resigned from the board last Thursday with no reason given."
20 Not only no attribution of a reason by the writer, but
21 specifically stating no reason given.

22 The very next paragraph, Mr. Bordoni can hardly
23 complain about because it contains his own denial that
24 his resignation -- "Today denied he resigned at the request
25 of the Franklin board and said he was not involved in foreign

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1 exchange transactions which led to Franklin's losses.
2
3 *New* Dow-Jones knew his report."

4 And then the final paragraph -- there is one
5 other paragraph in the story, which is the final paragraph
6 of the story itself, in the context of investigations here
7 that notes that the investigation by the Comptroller of
8 the currency as to whether there was any fraud involved
9 in the recent foreign exchange losses is continuing and
10 includes everyone, from the lowest -- from the newest
11 employee to the top of the bank.

12 With respect to the one point your Honor raised,
13 the phrase "which some observers feel got the bank into
14 trouble," to the extent that that indicates anything
15 about Bordoni, it indicates, yes, his style as applied
16 by people that were operating the program may have gotten
17 the bank into trouble, but to say, as we note in our brief
18 our reply brief, which we brought with us today and served
19 today, that if Stan Musial teaches somebody how to stand
20 at the plate and two years later -- two years later --
21 because every reference to Bordoni in the story is 1972,
22 that player, using that batting stance strikes out, it
23 does not mean either that Musial is an incompetent batter,
24 that Musial is generally an incompetent batting teacher,
25 that Musial was responsible for the poor batting of the

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individual or that anyone other than the player himself was responsible for the poor batting.

Our reference is to style. I would also say this is a single instance, under New York State law, with respect to Bordoni and I would note in that connection what might be called the seminal case, Foote v. Brown, which established the single instance rule, did note that one of the bases for that rule is related, if you will, to First Amendment values which affects, it seems to me, all of these cases involving major news events of this kind involving one of the major issues of our day.

I quote a sentence from the key language in Foote v. Brown where the court said, "To carry the right of action so far would be unnecessary for the protection of any profession and would be an unreasonable check upon the freedom of discussion. There is no physician however eminent who is not liable to mistake the symptoms of a particular disease or any attorney who may not misunderstand complicated nature and legal consequences of a particular litigation. There being no special damages averred in this case, judgment ought to be arrested."

I rest on that language, unless your Honor has questions.

MR. FIELD: If it pleases the Court, for the

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2 record, my name is David Field, with DiFalco, Field &
3 O'Rourke, 605 Third Avenue, New York City.

4 Your Honor, I think my eminent adversary has lost
5 sight of the fact that Carlo Bordonni had no part in the
6 foreign exchange transactions conducted by the Franklin
7 Bank. Therefore, the article attributing to him the in-
8 ception and the continuation of foreign currency transactions
9 is, in and of itself, an untrue statement.

10 THE COURT: Mr. Field, do I go into that, as to
11 whether or not he had any part in these transactions on
12 this motion?

13 MR. FIELD: Your Honor, for purposes of a motion,
14 it is my opinion, to dismiss the pleadings the defendants
15 must accept as true the plaintiff's allegations.

16 THE COURT: Is that the allegations, that he had
17 no part in it?

18 MR. FIELD: The allegation is that he had no part
19 in foreign currency transactions. It is that way in all
20 the complaints, your Honor.

21 In paragraph 13 of the complaint, "Bordonni as
22 an outside director of the board of directors of Franklin
23 was never involved directly or indirectly in the performance
24 of any duties other than those of an outside director,"
25 and, your Honor, specifically paragraph 15 says --

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2 THE COURT: You are skipping paragraph 14?

3 MR. FIELD: I thought it was paragraph 14.

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4 THE COURT: I don't see how you can take that
5 position in light of the broad sweep of paragraph 14. He
6 may have been an outside director, and you specifically
7 allege, "Due to his reputation, financial banking ac-
8 quaintances and contacts in the European financial community,
9 Bordoni assisted in the placement of approximately three-
10 quarters of a billion Eurodollar funds in London, Nassau,
11 Bahamas" -- how can you really say that, what you just said?

12 MR. FIELD: It had nothing to do with the internal
13 affairs of the company; it was a particular transaction
14 he was called upon to consummate for the bank and that was
15 the raising of those Eurdollar funds.

16 THE COURT: How can I disregard this allegation
17 of your complaint?

18 MR. FIELD: Paragraph 15 relates specifically to
19 the foreign currency exchange transactions and says that
20 "At no time prior to his election as an outside director,
21 during his directorship or subsequent to his resignation
22 as a director was Bordoni responsible for any foreign
23 currency transactions to which the bank was a party."

24 THE COURT: What does that mean as against
25 paragraph 14?

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2 MR. FIELD: It is going into a specific trans-
3 action, your Honor, which is really the heart of the
4 articles of the Washington Post. We wanted to make it clear
5 to the Court not only did he not have any impact on the
6 day-to-day operations of the company but particularly with
7 reference to the foreign currency exchange transactions
8 of which the article accused him of fomenting. He had
9 absolutely nothing to do with them and that is why that
10 allegation is set forth in the complaint. For the
11 purpose of this motion, that must be deemed admitted, your
12 Honor.

13 The argument by counsel for the defendant breaks
14 apart each particular paragraph of the article. When you
15 break it apart and stand it on its own, there are parts
16 which might not be libelous per se but, again, your Honor,
17 they must be read as an entirety.

18 The cases say that and *November v. Times, Inc.*,
19 said, "The meaning depends not on isolated or detached
20 statements but on the whole apparent scope and intent of
21 the article. The words are to be construed not with the
22 close precision expected from lawyers and judges but as
23 they would be read and understood by the public to which
24 they are addressed."

25 The court went on to say, "No single sentence or

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2 declaration of alleged fact in that particular case,"
3 November v. Time, "is directly and boldly defamatory but
4 a jury should decide whether a libelous intendment would
5 naturally be given to it by the reading public acquainted
6 with the parties and the subject matter."

7 Incidentally, the November v. Time case related
8 to an attorney accused by the publication of having not
9 done his duty with respect to his client not in connection
10 with a particular proceeding but not having done his duty
11 in stages of these proceedings and the court held that
12 the single instance rule does not apply there, that the
13 slur against the attorney affected his entire reputation
14 as an attorney not in particular on one specific act and
15 it is our contention that the article casts disparity upon
16 Bordoni's entire reputation as an international banker.

17 I think when I get into the article, your Honor,
18 I can make that eminently clear.

19 In the case of Daily v. Engineering and Mining
20 Journal, the language claimed as defamatory stated of the
21 defendant that his extravagances started people and finally
22 got the company into trouble. The court held that was
23 libelous per se and stated that "Charges even though they
24 do not impute to plaintiff disgraceful conduct would be
25 actionable if their tendency is to injure him in his

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2 particular business, calling, trade, or profession."

3 They have alleged in the article that Bordoni
4 had a high style of speculation. Your Honor, in banking
5 speculation is not a very pleasant word to use. Bankers
6 are supposed to be conservative. The article not only says
7 speculation in foreign currencies, it says high style of
8 speculation. In fact, in the June 26th article it says
9 foreign currency speculation is like shooting craps.

10 Your Honor, a banker is not supposed to shoot
11 craps and any allegation that a banker did shoot craps
12 certainly disparages his reputation.

13 Although the article of June 26th does cite
14 an unnamed source as saying that there may not be anything
15 illegal in the foreign currency transactions which resulted
16 in a profit for the Franklin Bank, nevertheless the article
17 does say that "The SEC and the Comptroller of the currency
18 are investigating how much of Franklin's profits last year
19 are the result of business deliberately shunted Franklin's
20 way by Sindona's other banks and business enterprises."

21 The article ties in Bordoni to Sindona and
22 Sindona's banks.

23 THE COURT: Except there is in the following
24 paragraph, the second following paragraph, "The source
25 confirmed the Comptroller was looking into the involvement

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of Carlo Bordoni in Franklin's foreign exchange operation but said this was not related to misevaluation of transactions related to recent losses."

MR. FIELD: Yes, your Honor, but that is like saying the SEC is investigating you and in the next paragraph saying well, the SEC is investigating only one aspect, but there are other aspects to this as well.

If you go, your Honor, to the second from the last paragraph and the last paragraph in that article, it directly states, which is false, according to our client, that "Bordoni is credited with organizing Franklin's foreign exchange operations and introducing"-- well, your Honor read it before, his high style speculative style which got the bank into trouble.

The next sentence says, "An investigation of the Comptroller into civil fraud."

Now, any reasonable person reading that is going to link Bordoni to a possibility of fraudulent transactions, or at least he is going to say, "I have to be careful in dealing with this man because the newspaper said he is implicated in foreign currency transactions which are like shooting craps and that he is being considered by the Comptroller of currency for fraud and that possibly the SEC is investigating him as well."

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2 It is directly a slur and impeachment of the
3 man's credibility and his ability to conduct his business.

4 THE COURT: Do you agree, Mr. Field, that I have
5 to test these articles as against the innuendo as you have
6 alleged the innuendo in your complaint?

7 MR. FIELD: Your Honor, the innuendo is only one
8 cause of action. The innuendo only relates to the crime
9 and we pleaded --

10 THE COURT: Well, what else do you have here?

11 MR. FIELD: We allege direct libel in the first--

12 THE COURT: What do you mean by "direct libel,"
13 without any innuendo at all?

14 MR. FIELD: Without innuendo. We say the language
15 is clear on its face that this is the meaning people would
16 interpret. We are not saying we are enlarging it, extending
17 it, but reasonable people reading this article would say
18 that Bordoni was an international foreign currency speculator

19 THE COURT: On that cause of action, who makes
20 that determination?

21 MR. FIELD: Your Honor, basically that determinati
22 is for a jury to decide.

23 THE COURT: Can I give them the complaint and tell
24 them they have to decide?

25 MR. FIELD: No, your Honor. Basically it is on the

1 evidence presented to the jury.

2 THE COURT: Well, they take the article and you
3 just read the four corners of the article to decide whether
4 something is libelous per se, don't you? Isn't that the law?
5

6 MR. FIELD: That plus the statement that Bordoni
7 had nothing to do with foreign currency transactions by
8 the bank. That fact, which would be admitted to the jury
9 and the jury would accept it as true, which for the purposes
10 of this motion it must be, and the article, the jury could
11 then determine whether or not the article is libelous per se.
12

13 THE COURT: Go ahead.

14 MR. FIELD: Nowhere in the allegation of the
15 complaint is it alleged Bordoni was a foreign currency
16 speculator. It says he is an international banking expert
17 but doesn't state that he is involved in any way at any time
18 with foreign currency speculation.

19 With respect to the single instance, your Honor,
20 which relates to one particular transaction in which one
21 person -- in which a person was alleged to have committed
22 one act and the courts have held that that one act would not
23 be libelous per se without pleading special damages, I think
24 I indicated to the Court that here the allegations of the
25 article relate to a series of continuous foreign currency
transactions and speculation by the bank and with respect

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to those it continued over a period of time and goes directly

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to the man's ability to act as a foreign international

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monetary expert. Any slur on his reputation that he was in-

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involved in this tremendous Franklin National Bank loss in

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foreign currency exchanges severely handicaps him in

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continuing his business and continuing with his great

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reputation as an international banker and in that respect,

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your Honor, he has been defamed.

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And the single instance, your Honor, does not

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apply to the imputation of a crime but relates to the im-

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putation of -- only to a trade or business, and the courts

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have said if you are imputed to have committed a crime or

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to have been involved in a crime, the single instance rule

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does not apply, it only applies to trade or business, but

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in our case it is not applicable because it was more than

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one instance the articles allege Bordoni to have been in-

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involved in.

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THE COURT: All right, submit the papers in this

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matter.

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MR. FIELD: Your Honor, may I read the amendment?

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Counsel for the defendant and counsel for the plaintiff

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have orally amended the allegations with respect to juris-

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diction as follows:

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Paragraph 3 is amended to read as follows: "Upon

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information and belief defendant Twin Coast Newspapers, (Twin Coast) is a corporation organized and existing under the laws of the State of New York and maintains its principal place of business at 99 Wall Street, New York, New York, and is doing business within this judicial district," and paragraph 4 is amended to read, "Upon information and belief defendant Harold Gold (Gold) is a citizen and resident of the State of New York, is an employee of the defendant Twin Coast and has its offices at 99 Wall Street, New York, New York, and may be found within this judicial district."

MR. SCHMEIDLER: Your Honor, I am an associate of the firm of Amend & Amend and I represent the defendant Twin Coast Newspapers, Incorporated, and Harold Gold in this action.

The complaint in this action is a virtual copy of the complaints in the other actions which have been discussed. The innuendo pleaded in the complaint is an exact copy of the innuendos pleaded in the other actions and there is really nothing new to be said about the law. The only difference between these actions is the content of the articles of which plaintiff complains, and our article does not attribute any responsibility for foreign exchange trading to the plaintiff, Mr. Bordoni. In fact, your Honor, to the extent that there is a discussion of responsibility

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2 for losses due to foreign exchange trading, the article
3 fairly clearly lays them at the doors of other people in
4 Franklin National Bank, and in paragraph 7 it refers to
5 the dismissal of the president of the bank and the resig-
6 nation of the executive vice chairman "In whose department
7 the losses occurred." So that to the extent the plaintiff
8 complains in his brief, but not in his complaint, of an
9 attribution to him of responsibility for the losses suffered
10 by the bank, there simply is nothing to that effect in
11 the article.

12 The innuendo in the complaint as to crimes that
13 may have been committed in making improper reports to the
14 government regulatory authorities, there is absolutely
15 nothing in the article that makes any suggestion that any
16 reports were made or that Mr. Bordoni had any part in
17 making any reports that the article doesn't refer to. That
18 innuendo is completely without support in the article.

19 The innuendos that are in the memorandum of the
20 plaintiff but not in his complaint are rebutted and are
21 a matter of law and I don't think it is necessary to go
22 through those innuendos one at a time especially since your
23 Honor has indicated that the motion must be decided on
24 the basis of the innuendos actually pleaded.

25 THE COURT: Mr. Field, what paragraphs do you rely

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2 upon to support your innuendos? First you claim it is
3 libelous per se, without reference to an innuendo?

4 MR. FIELD: The article as a whole has the meaning
5 that Bordoni was implicated in the foreign currency trans-
6 actions and that he was responsible for the losses. If I
7 may read you just a couple of paragraphs in the article,
8 paragraph 4 says, "Mr. Bordoni's exit from the board also
9 raised questions about his role in the bank's foreign
10 exchange trading."

11 THE COURT: What is libelous about that?

12 MR. FIELD: Your Honor, it goes on to say --
13 that standing alone is not, but the next paragraph says,
14 "The bank lost 45.8 million in foreign exchange transactions."
15 Now, if it is not true that Bordoni was involved in foreign
16 exchange transactions, then attributing to him this loss
17 is libelous per se.

18 In addition, it goes on to say, later on in the
19 article, that "Franklin disclosed discovery of large
20 losses in unauthorized foreign exchange trading" and later
21 in the paragraph, at the end, it says, "A Treasury official
22 said the government is investigating the possibility of
23 fraud in connection with the losses."

24 So there are statements in there which implicate
25 Mr. Bordoni not only in the foreign exchange losses in

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which he had no part but also in the possibility that he may have been party to some fraud perpetrated on the bank and the main thing, I think, your Honor, to keep in mind is that he had nothing to do with this at all, that he was never there --

THE COURT: I must say I can't accept that statement in the light of your allegation in paragraph 14. How can you say he had nothing to do with this when you emphasize his participation in transactions running to three-quarters of a billion dollars?

MR. FIELD: That was not a foreign exchange transaction.. That is a funding of moneys, loans for the bank. Foreign exchange transactions was amply stated in the article written by the Washington Post. It is speculation on whether or not currency goes up or down in the future. It is like playing the commodities market. The fact that Bordoni was instrumental in raising three-quarters of a billion Eurodollars for the bank for its various branches has absolutely nothing to do with foreign currency exchanges. It was put in there to show the man had influence with banks and was instrumental in the banking field and that is basically all that allegation was put in theretto represent.

THE COURT: You say the Eurodollars have nothing

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to do with foreign currency transactions?

MR. FIELD: No, your Honor. Foreign currency transactions would mean I would buy a million Swiss francs, expecting the market six months from now to be higher in Swiss francs than today --

THE COURT: That is what the article said, the other article that was the subject of the prior suit?

MR. FIELD: That's correct. That is why in the complaint we were careful to allege he had absolutely nothing to do with the foreign currency exchange transactions of the bank. He was on the international executive committee but he had nothing to do with the foreign currency exchanges, nor did he advise or push the bank into foreign currency exchanges. If that is not true, your Honor, and with all due respect, your Honor must accept it as true for this motion, the article is false and defamatory and it would be a question of fact for the jury to decide if in fact the article has defamed Bordoni.

What your Honor would have to say is there is no question of fact at all, no reasonable person could believe this article was defamatory and therefore, as matter of law, you are throwing it out. Quite the contrary is true, based upon the interpretation of articles as cited in the various cases that we have cited in which we really

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2 have no disagreement, counsel for the defendant or I, as
3 to how articles are to be interpreted, and I believe that
4 any reasonable person reading this article and knowing
5 Bordoni never had anything to do with foreign currency
6 transactions would say that these articles are libelous per
7 se.

8 THE COURT: Where does this article state that
9 he had something to do with foreign exchange transactions?
10 Where does it say that he did?

11 MR. FIELD: Go down two more paragraphs: "A-
12 cording to the business magazine Successo, Mr. Bordoni
13 was chosen by Mr. Sindona to play a major part in Franklin
14 foreign currency trading."

b13 15 THE COURT: How does that reflect upon him?

16 MR. FIELD: It continues, your Honor, "The presence
17 at Franklin of the foreign exchange expert Carlo Bordoni
18 explains everything." Explains what? Explains the losses
19 your Honor. That is what it refers to.

20 THE COURT: It is referring to an article,
21 an article in the March issue of Italian magazine and they
22 are quoting from that.

23 MR. FIELD: Yes, but why is it used in this
24 particular article by the newspaper the Journal of Commerce
25 It is used in here to show Bordoni had something to do

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2 with the tremendous losses at the bank in foreign
3 currency exchanges.

4 MR. SCHMEIDLER: I would point out the losses
5 referred to as being disclosed were not in March but the
6 disclosures referred to were in May and, similarly, I
7 point out as to the timing of the quotation or indirect
8 quotation as to investigation of the possibility of fraud,
9 that again the timing is such that it is clear that the
10 investigation had nothing to do with the resignation which
11 came well after such attribution.

12 MR. FIELD: That has nothing to do with his
13 resignation, your Honor. The investigation by the Treasury
14 official evidently relates to losses of unauthorized foreign
15 exchange trading, which the article says Bordoni was
16 responsible for. So that the whole article shows that
17 Bordoni was the one who was the major party libel for all
18 the losses the bank had and in fact they may have been
19 fraudulent.

20 MR. SCHMEIDLER: I would submit that "unauthorized"
21 contradicts the attribution of responsibility, that if
22 something is unauthorized you cannot say that it was
23 simultaneously authorized.

24 MR. FIELD: It is like saying a policeman shot
25 a convict but he was unauthorized. The fact is he still

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shot him.

THE COURT: Anything else? Is there any other party here? There was a fourth suit, wasn't there?

MR. FIELD: There was no motion made in that matter.

THE COURT: Against whom was that?

MR. FIELD: The Wall Street Journal.

THE COURT: All right.

A 72
Opinion; Bordoni vs. Twin Coast

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT

JUL 15 1 19 PM '75

S.D. OF N.Y.

----- x
CARLO BORDONI,

Plaintiff,

-against-

TWIN COAST NEWSPAPERS, INC. and
HAROLD GOLD,

Defendants.
----- x

74 Civil 3170

OPINION

#42800

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MICROFILM

JUL 15 '75

EDWARD WEINFELD, D. J.

This is another of four actions in which plaintiff challenges as libelous articles concerning the affairs of Franklin National Bank ("Bank"), which refer to plaintiff's relationship to, and resignation as a director of, the Franklin New York Corporation ("Franklin"), the Bank's parent. The defendants in this case are Twin Coast Newspapers, Inc., publisher of the Journal of Commerce ("Journal"), in which the alleged libelous article appeared, and Harold Gold, its managing editor.

Reference is made to and familiarity assumed with this court's opinions filed this day in plaintiff's separate actions against the New York Times⁽¹⁾ and the Washington Post.⁽²⁾ In this suit, too, the parties agree that the applicable law is that of the State of New York.

The defendants move to dismiss the complaint pursuant to Rule 12(b)(6) on the ground that it fails to state a claim upon which relief can be granted in that it

(1) Bordoni v. The New York Times Co., 74 Civ. 3168.

(2) Bordoni v. Washington Post Co., 74 Civ. 3169.

fails to allege special damages; which motion plaintiff resists, as in the other cases, upon his contention that the article is libelous per se and accordingly actionable without any allegation of special damages.

Plaintiff, tracking his complaint in the other actions, charges that the article is libelous per se in two respects: (1) that it defames him in his business calling; and (2) it intimates his participation in criminal acts in violation of the federal banking and other laws. As to the first charge, he asserts three separate claims without any innuendo, and as to the second charge, he relies upon an innuendo.

The article here at issue is centered about the same subjects as the articles published by the New York Times and the Washington Post -- plaintiff's relationship to Sindona; his resignation as a director of Franklin; the Bank's \$45.8 million foreign-exchange losses, which together with other losses put "the nation's 23rd largest bank in financial jeopardy"; the fact that large losses were due to unauthorized foreign-exchange trading; the dismissal of the Bank's president and resignation of its executive vice chairman, in whose department the

losses occurred; and a Treasury Department official's statement that the "government is investigating the possibility of fraud in connection with the losses." The Journal article includes some matter not contained in the others. It refers to an Italian magazine's report that Bordoni "was chosen by Mr. Sindona to play a major part in Franklin's foreign-exchange trading," and then quotes from a March [1974] issue of the magazine: "Mr. Sindona plans to make money (at Franklin National) out of foreign currency. The presence at Franklin of the foreign exchange expert, Carlo Bordoni, explains everything."

The court, for substantially the same reasons which underlie its determinations in the other actions, finds that the article is not libelous per se as alleged in the first three claims. Nothing in the additional matter referred to above impugns, directly or indirectly, plaintiff's standing or capacity as an international monetary expert, or reflects upon his professional integrity.

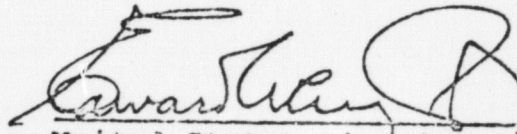
As to the remaining claim, supported by an innuendo that the article was intended and was understood to mean that plaintiff participated in criminal acts in

violation of the federal banking and other laws, this is no more warranted here than in the instance of the other two cases.

"The pleaded innuendo is strained, unreasonable and unjustified.' It does not explain any statement in the article, but adds an entirely new and independent thought that finds no support in the article." (3)

Accordingly, the complaint is dismissed.

Dated: New York, N. Y.
July 15, 1975


United States District Judge

(3) Tracy v. Newsday, Inc., 5 N.Y.2d 134, 137 (1959).

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Opinion; Bordoni vs. New York Times

U.S. DISTRICT COURT

JUL 15 1 19 PM '75

S.D. OF N.Y.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----- x
CARLO BORDONI,

Plaintiff,

-against-

NEW YORK TIMES COMPANY, INC., A.M.
ROSENTHAL and JOHN H. ALLAN,

Defendants. :
----- x

42801
74 Civil 3168

OPINION

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MICROFILM

EDWARD WEINFELD, D. J.

This is one of four actions commenced by Carlo Bordoni against various publications charging that he was falsely libelled by news articles concerning the affairs of the Franklin National Bank ("Bank"), which, among other matters, described the circumstances of plaintiff's resignation as a director of Franklin New York Corporation ("Franklin"), the Bank's parent. The defendants in this case are the New York Times, A. M. Rosenthal, its managing editor, and John H. Allan, the reporter who wrote the alleged libelous article.

Plaintiff's complaint alleges he is an acknowledged international monetary, banking and financial expert. It sets forth four separate claims, none of which pleads special damages; rather, plaintiff relies upon allegations that the article in question is libelous per se and is actionable even without an allegation of special damages. The defendants move to dismiss the complaint on the grounds that (1) no statement defamatory of plaintiff is contained in the article, and (2) even if such a statement is found therein, under New York's "single-instance"

rule the complaint is deficient because of its failure to
 (1)
 plead special damages. Thus the essential question is
 whether the article is libelous per se.

As a general rule, a writing or printed article is libelous per se -- that is, actionable without allegation or proof of special damages -- "'if it tends to expose a person to hatred, contempt or aversion, or to induce an evil or unsavory opinion of him in the minds of a substantial number of the community, even though it may impute no moral turpitude to him' . . . [or] tends to disparage a person in the way of his office, profession or trade." (2) So, too, a writing that charges the commission
 (3)
 of a crime is libelous per se.

The alleged offending article, which was published in the New York Times on June 24, 1974, reads as follows:

-
- (1) Jurisdiction is grounded upon diversity of citizenship and the parties agree New York law applies.
- (2) *Nichols v. Item Publishers, Inc.*, 302 N.Y. 596, 600-01 (1956), quoting *Monahan v. Chesley*, 297 N.Y. 94, 100 (1947). Accord, *Tracy v. Newsday, Inc.*, 5 N.Y.2d 134, 135-36, 182 N.Y.S.2d 1, 3 (1979).
- (3) *Jordan v. Geis*, 20 App. Div. 2d 773, 247 N.Y.S.2d 650 (1st Dep't 1964).

"A director closely associated with Michele Sindona, the Italian financier who is the biggest shareholder in the Franklin New York Corporation - the parent of the Franklin National Bank - is resigning from the board of the holding company.

"The man leaving the board is Carlo Bordoni, a Milan banker and director of Fasco International Holding, S. A., who played an important role in pushing Franklin into foreign-exchange trading in a major way. Fasco is a Luxembourg investment company owned by Mr. Sindona.

"It was in foreign-exchange trading that Franklin lost \$45.8 million during the first five months of 1974, Franklin disclosed last Thursday in a long-awaited restatement of its earnings. The foreign-exchange loss was part of a \$63.6 million over-all loss reported by Franklin for the five months.

"Changes in Management

"With Mr. Bordoni's resignation, Franklin's management in foreign-exchange trading has changed almost entirely.

"At the time Franklin's foreign-exchange losses were announced, Peter R. Shaddick, executive vice chairman and head of the bank's international operations, resigned. Andrew N. Carolalo, vice president and manager of the bank's foreign-exchange trading desk, resigned a short time later.

"Donald Emrich, a foreign-exchange trader with the rank of assistant cashier [sic], was dismissed by the bank when the foreign-exchange losses were first disclosed.

"Then Franklin hired Edwin A. Reichers, a former senior vice president of the First National City Bank, as an executive vice president to reorganize its international currency trading operation.

"Whether the Bordoni resignation was merely a part of this foreign-exchange housecleaning or part of a downgrading of Mr. Sindona's influence at Franklin could not be determined. Mr. Sindona was not present at a Franklin board meeting last Thursday, but his absence was not unusual.

"Mr. Sindona has agreed to add as much as \$50-million in new capital to the Franklin New York Corporation as part of a plan announced May 12. The plan was originally designed to increase the capital of the bank by that amount.

"In the Franklin's release last Thursday, however, Harold A. Gleason, then chief executive, stated that the money raised by stock sales would not be funneled into the bank but would be retained by the Franklin New York Corporation to meet the obligations of the parent company.

"Barr Succeeded Gleason

"Mr. Gleason resigned last Thursday as chairman, president and chief executive officer, but he remained a director and also retained the title of executive vice chairman. Joseph W. Barr, former Secretary of the Treasury, took over immediately as chairman, president and chief executive. As chairman, of course, he is a member of the board of directors.

"Franklin New York Corporation has \$35-million of 7.30 per cent publicly held notes outstanding, and it also has a

\$30-million demand loan from the Manufacturers Hanover Trust Company. The publicly held notes mature in 1979, and the bank loan comes due in 1977.

"To raise \$50-million, Franklin New York has disclosed plans to make two stock offerings - one prior to Feb. 21, 1975, and the other before Aug. 21, 1975. Mr. Sindona has agreed to purchase any shares not bought by other stockholders.

"Sindona Has Loophole

"In its release Thursday, Franklin noted that Mr. Sindona's obligation to purchase unsubscribed shares in the two proposed stock offerings was subject to a continuation of the bank's normal business and also to an absence of lawsuits.

"This loophole, coupled with Mr. Bordoni's resignation, heightened the impression that Mr. Sindona might be withdrawing - either by plan or from pressure from the regulatory authorities - from Franklin.

"According to a published report in The Washington Post, efforts to merge the Franklin National Bank with either another New York bank or with a major English financial institution 'are far advanced.'

"Source is Quoted

"The report, quoting 'an authoritative source,' [sic], said the major matter that needed to be cleared up was whether the Federal Deposit Insurance Corporation would assume substantial risk for any potential losses that have not yet been uncovered.

"Mr. Gleason, however, on Thursday stated: 'Neither the bank nor the corporation [is] presently a participant in any

negotiations involving a merger, sale of assets or other disposition of any interest in the bank.'

"Asked yesterday about the possibility of any merger plan's being 'far advanced,' Arthur G. Perfall, senior vice president of Franklin, replied: 'We stand by our statement of Thursday.'

"Wille Denies F.D.I.C. Role

"Frank Wille, chairman of the Federal Deposit Insurance Corporation, denied 'categorically' that the F.D.I.C. is participating or had participated in any discussion of a merger or sale of Franklin assets.

"Mr. Wille, who was at Sea Island, Ga., at a convention of Georgia bankers, said the F.D.I.C. was being kept informed also of what the Federal Reserve Board and the Controller of the Currency were doing.

"'What we're all waiting to see,' Mr. Wille said, 'is the public reaction to the restated earnings and the management changes.'"

Essentially plaintiff charges that the above article is libelous per se in two respects: (1) that it defames him in his business reputation, professional competence and standing as an expert in international financial affairs, and (2) that it intimates he had participated in criminal acts in violation of federal banking and other laws.

As to the first charge, that the article libelled him in his business calling, the plaintiff contends this appears from its very language, without any innuendo. In this instance, he alleges three separate claims. The first, in addition to alleging that the article falsely impeached his professional competence and integrity, further charges that the defendant published it with knowledge of its falsity. The second claim substantially repeats the first, but alleges that the article was published in reckless disregard of the truth. The third claim substantially repeats the first two, but omits any charge of knowledge of falsity or recklessness.

With respect to these three claims, the complaint does not specify those statements in the article which plaintiff contends injure him in his business or profession, or impute to him some quality "which would be detrimental, or the absence of some quality which is essential to the successful carrying on of his office, profession or trade."

(4) Listed as the fourth claim in the complaint.

(5) *Cole Fincher Pogue, Inc. v. Carl Ally, Inc.*, 20 App. D. 2d 423, 427, 288 N.Y.S.2d 556, 562 (1st Dep't 1968), *aff'd*, 25 N.Y.2d 943, 305 N.Y.S.2d 154 (1969).

Since the libel complained of is with respect to plaintiff's business competence and integrity, it must appear that the article charged the plaintiff, in effect, with being "ignorant, incompetent, [or] incapable in his
(6)
calling," or otherwise impugned his professional standing and integrity.

In determining whether the article is defamatory, it must be read as a whole, and the words used given their natural import, and their plain and ordinary meaning.
(7)
So reading the article, with special emphasis on those portions which refer to plaintiff, the court concludes that the naked words of the article standing alone
(8)
are not libelous per se.

The article starts with the statement that

(6) *Amelkin v. Commercial Trad. Co.*, 23 App. Div. 2d 830, 259 N.Y.S.2d 396, 398 (1st Dep't 1965), aff'd, 17 N.Y.2d 500, 267 N.Y.S.2d 216 (1966).

(7) *November v. Time, Inc.*, 13 N.Y.2d 175, 178-79 (1963); *O'Connell v. The Press Pub. Co.*, 214 N.Y. 352, 358 (1915); *Morrison v. Smith*, 177 N.Y. 366, 368 (1904); *Scheinblum v. Long Island Daily Press Pub. Co.*, 37 Misc. 2d 1015, 239 N.Y.S.2d 435, 438 (Sup. Ct. 1962), aff'd, 239 N.Y.S.2d 530 (2d Dep't 1962).

(8) *See Tracy v. Newsday, Inc.*, 5 N.Y.2d 41, 137; *Reoux v. Glens Falls Post Co.*, 11 App. Div. 2d 913, 203 N.Y.S.2d 497, 498 (2d Dep't 1960).

Bordoni, a director closely associated with Sindona, the largest shareholder in Franklin, is resigning from the Board -- a commonplace event in daily corporate life. The article continues that Bordoni "played an important role in pushing Franklin into foreign-exchange trading in a major way"; that it was in foreign-exchange trading that "Franklin lost \$45.8 million during the first five months of 1974," which loss was part of a larger loss reported by Franklin for that period; that with Bordoni's resignation "Franklin's management in foreign-exchange trading has changed almost entirely." Then follows a statement that two officials who had been respectively head of the Bank's international operations and manager of its foreign-exchange trading desk, had resigned at about the time the foreign-exchange losses were announced. The following paragraphs refer to the dismissal of one of the Bank's foreign-exchange traders when the losses were first disclosed, and to the hiring of a new executive vice president "to reorganize its international currency trading operation," and the article continues that "[w]hether the Bordoni resignation was merely a part of this foreign-exchange housecleaning or part of a downgrading of Mr.

Sindona's influence at Franklin could not be determined."

Plaintiff places heavy store upon the foregoing as reflecting upon his ability and expertise in foreign exchange monetary matters. He emphasizes the statement that it was plaintiff "who played an important role in pushing Franklin into foreign-exchange trading in a major way." But this is to fragmentize and dissect the article rather than to read it as a whole and in context. Indeed, for a director of a corporation to urge, even in a strong way by force of his individual influence, a policy upon fellow directors does not reflect upon one's professional standing or competence. It is the legitimate exercise of a director's function, whether he is an inside or an outside director, as plaintiff describes himself. Foreign-exchange trading is lawful and may result, as in the instance of any other type of investment, in either profits or losses. The article itself suggests the Bank's continuation in foreign-exchange trading by the reference to the hiring of an executive vice president to reorganize the Bank's international currency trading operation.

Plaintiff's claim that the article attributes to him the Bank's substantial losses in foreign-exchange

trading is not borne out by a fair reading of the article
(9)

in context. While it is true that the bank's policy of engaging in foreign-exchange trading in a major way may be attributed to plaintiff, the article does not state or imply that he managed the Bank's foreign-exchange trading or played any role in the actual transactions which resulted in the losses. To the contrary, the references to the resignation of top officials of the Bank in charge of its foreign-exchange program and the dismissal of a foreign-exchange trader suggest it was they, if anyone, who were
(10)
responsible for the losses.

Finally, giving full sway to plaintiff's allegations in his complaint as to his background, prestige and

(9) As already observed, no innuendo is pleaded as to the claims alleging libel of plaintiff in his calling. Any such innuendo should have been pleaded. See *Kimmerle v. New York Evening Journal, Inc.*, 262 N.Y. 99, 101 (1933); *Morrison v. Smith*, 177 N.Y. 366, 369 (1904); *Cole Fischer Rogow, Inc. v. Carl Ally, Inc.*, 288 N.Y.S.2d at 562; *Reoux v. Glens Falls Post Co.*, 203 N.Y.S.2d at 498; *Lasky v. Kempton*, 285 App. Div. 1121, 140 N.Y.S.2d 526 (1st Dep't 1955); *Yonkers R.R. v. Herald Statesman, Inc.*, 248 App. Div. 633, 288 N.Y.S. 286 (2d Dep't 1936), *aff'd*, 273 N.Y. 541 (1937); *Kuster v. Press Pub. Co.*, 80 App. Div. 615, 80 N.Y.S. 1050, 1051 (1st Dep't 1903).

(10) For the applicable standard in determining whether innuendo is warranted, see note 16 infra and accompanying text.

standing, even if the article were read to defame plaintiff, the complaint must be dismissed under New York law.

Through the years New York has adhered to the "single-instance" rule first enunciated by its courts in 1811 in
(11)

Foot v. Brown. There it was held that charging an attorney with ignorance or unskillfulness in his handling of a particular case was not actionable in the absence of a
(12)

plea of special damage. The continuing vitality of the "single-instance" rule was reaffirmed by the New York
(13)

Court of Appeals in November v. Time, Inc., where the court noted:

"[T]he rule still holds that language charging a professional man with ignorance or mistake on a single occasion only and not accusing him of general ignorance or lack of skill cannot be considered defamatory on its face and so is not actionable unless special damages are pleaded." (14)

The single-instance rule was applied recently

(11) 9 Johns. 64.

(12) See also Twigger v. Ossining Print. & Pub. Co., 161 App. Div. 710, 146 N.Y.S. 529 (2d Dep't 1914), appeal dismissed, 220 N.Y. 716 (1917) (charging dentist with unskillful work on a patient held not to state a claim in the absence of an allegation of special damage).

(13) 13 N.Y.2d 175, 244 N.Y.S.2d 309 (1963).

(14) Id. at 178.

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in a case that parallels the instant one. There plaintiff, the publisher of an investment advisory service, charged that the defendants circulated in the financial community and among members of the investing public a monthly magazine which contained an article stating that plaintiff had recommended a stock which had declined in value -- that "the stock is running backward." The Appellate Division reversed an order of Special Term denying dismissal of the complaint and granted summary judgment to defendants. (15) The court noted that the article consisted "of the sardonic recital of what at worst might be considered a single instance of mistaken exercise of business judgment on plaintiff's part, without any imputation of fraud, deceit or malpractice," and held that the complaint did not state a cause of action in libel by any applicable standard.

Plaintiff contends that the "single-instance" rule is inapplicable upon a claim that the article charges him with more than one error with respect to the Bank's foreign-exchange trading -- that it charges "plaintiff's

(15) *Arnold Bernhard & Co. v. Finance Pub. Corp.*, 32 App. Div. 2d 516, 298 N.Y.S.2d 740 (1st Dep't), aff'd, 32 N.Y.2d 712, 307 N.Y.S.2d 220 (1969).

policies and practices over a course of years involving a myriad of foreign currency transactions conducted on behalf of the Bank resulted in Franklin National Bank's suffering losses of \$45.8-million which in turn brought the Bank to the brink of financial disaster." However, this contention is without substance since it disregards the plain language of the article. As already noted, the article does not state or imply that Bordoni played any role in the actual foreign currency transactions which resulted in the losses. What it does state is that he played an important role in pushing Franklin into foreign-exchange trading. This was single advice or advocacy of a single policy of investment to management. The article does not directly or indirectly state that Bordoni thereafter engaged in or directed any of the transactions which effectuated the foreign-exchange trading policy.

The court concludes that the article does not defame the plaintiff in his calling, and even if it did call into question his business judgment in advocating the foreign-exchange policy, the "single-instance" rule would bar recovery. Accordingly the three claims here considered are dismissed.

There remains for consideration the claim wherein plaintiff relies upon an innuendo to support the charge that the article is libelous per se in charging that he participated in criminal acts. Under this claim it is first alleged that it is well known in the financial community that Franklin is a publicly owned company whose stock is traded on the New York Stock Exchange and is required to file periodic reports with the Exchange and various federal regulatory agencies. Then it is further alleged that by the article the defendants meant and were understood by persons reading it to mean that Bordoni had participated in criminal acts in violation of federal banking laws and regulations, including but not limited to disclosure requirements to which public and banking corporations such as Franklin and the Bank are subject.

Plaintiff perforce resorts to innuendo to support this claim, since the article makes no reference to criminal acts by him or for that matter by any other person named in the article. To sustain the innuendo, plaintiff underscores the following portion of the article:

"Sindona Has Loophole"

"In its release Thursday, Franklin noted that Mr. Sindona's obligation to purchase unsubscribed shares in the two proposed stock offerings was subject to a continuation of the bank's normal business and also to an absence of lawsuits.

"This loophole, coupled with Mr. Bordoni's resignation, heightened the impression that Mr. Sindona might be withdrawing -- either by plan or from pressure from the regulatory authorities -- from Franklin."

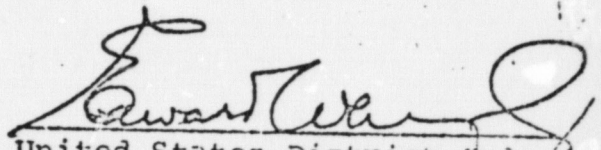
Based primarily thereon, plaintiff contends that the article suggested that the "regulatory authorities" were investigating the activities centering about the foreign-exchange losses, which, so the argument runs, the article attributed to Bordoni, and that the authorities were exerting pressure on the Bank to sever its ties with both Bordoni and Sindona. The argument continues that "[b]y innuendo, therefore, the article stated that Bordoni may have been involved in some kind of fraudulent criminal activity in connection with such losses." This is stretching an innuendo beyond its outer limits.

It is for the court to decide whether the article is capable of the meaning ascribed to it, and if

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it is not, then innuendo cannot make it libelous. (16) It
does violence to the ordinary and natural meaning of the
language quoted above, read in conjunction with the re-
mainder of the article, to say it is reasonably susceptible
to plaintiff's interpretation. The innuendo that plaintiff
participated in or committed criminal acts is unwarranted --
it is "strained, unreasonable and unjustified." (17) Accord-
ingly, the claim based upon innuendo is also dismissed.

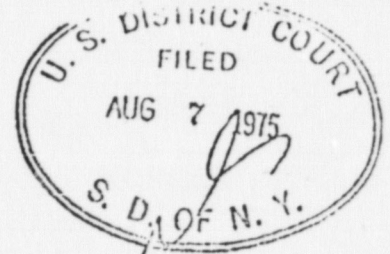
Dated: New York, N. Y.
July 15, 1975


United States District Judge

(16) Tracy v. Newsday, Inc., 5 N.Y.2d at 136.

(17) Id. at 137.

Judgment entered August 7, 1975.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
CARLO BORDONI

Plaintiff : 74 Civil 3170 (EW)

-against-

: JUDGMENT

TWIN COAST NEWSPAPERS, INC., and
HAROLD GOLD

:
Defendants

----- X

Defendants having moved the Court pursuant to Rule 12(b)(6), of the Federal Rules of Civil Procedure, and the said motion having come on to be heard before the Honorable Edward Weinfeld, United States District Judge, and the Court thereafter on July 15, 1975, having handed down its opinion granting the said motion, it is,

ORDERED, ADJUDGED and DECREED: That defendants TWIN COAST NEWSPAPERS, INC., and HAROLD GOLD, have judgment against the plaintiff, CARLO BORDONI, dismissing the complaint. a

Dated: New York, N.Y.
August 7, 1975

Raymond F. Berglund
Clerk

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CARLO BORDONI,

Plaintiff,

-against-

TWIN COAST NEWSPAPER, INC., and
HAROLD GOLD,

Defendants.
-----X

File Number: 74 Civ 3170
(E.W.)

NOTICE OF APPEAL

S I R S :

PLEASE TAKE NOTICE that the plaintiff herein,
CARLO BORDONI, hereby appeals to the United States Court of
Appeals for the Second Circuit from the Order and Judgment
dismissing the Complaint entered herein on the 7th day of
August, 1975.

Dated: New York, NY
August 28, 1975

DI FALCO FIELD & LOMENZO, ESQS.

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A meat & Bone

By Dan Geraghty